

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TENTANDTABLE.COM, LLC,

Plaintiff,

v.

GORILLA BOUNCE LLC,

Defendant.

21-CV-1318-LJV
DECISION & ORDER

On March 3, 2023, this Court granted a motion for a default judgment and issued an injunction against the defendant, Gorilla Bounce LLC (“Gorilla Bounce”).¹ Docket Item 14. In addition to awarding the plaintiff, Tentandtable.com, LLC (“Tent and Table”), \$11,696 in attorneys’ fees and costs, the Court enjoined Gorilla Bounce from:

1) [u]sing without the authorization of [Tent and Table] any of its trade dress rights, specifically including air blowers with the distinctive black and yellow color design, or that is otherwise confusingly or deceptively similar to any of [Tent and Table’s] trade dress rights, either alone or in conjunction with other words or symbols, as a part of any trademark, service mark, logo, on or in relation to any goods or services sold or distributed by the defendants, or in any other manner; and

2) [u]sing [Tent and Table’s] trade dress marks in any form or manner that would tend to identify or associate Gorilla [Bounce] or its business or services with [Tent and Table], including, without limitation, in marketing, promoting, advertising, identifying, selling, or distributing goods or services.

Id. at 17-18. The Court also ordered Gorilla Bounce to

destroy all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, Internet content (including all social media content), stationery, software, and any other items in its possession or control that

¹ The Court assumes the reader’s familiarity with the facts alleged in the complaint, Docket Item 1, and recounted in its previous decision and order, Docket Item 14 at 2-3.

contain the infringing designations of the [Tent and Table] air blowers, specifically including any use or reference of the distinctive design of the black and yellow air blowers, alone or in combination with other images, words, or symbols.

Id. at 18. Finally, the Court ordered Gorilla Bounce to “file a written report under oath setting forth in detail how it has complied with this injunction” within 30 days. *Id.*

After Gorilla Bounce failed to pay the ordered fees and costs or file a written report, Tent and Table moved for an order to show cause. Docket Item 21. More specifically, Tent and Table asked this Court to order Gorilla Bounce “to show cause why it should not be found in contempt” and “to pay immediately (a) the entire amount granted in the [o]rder [granting the default judgment], and (b) [Tent and Table’s] costs and attorneys’ fees incurred in attempting to enforce the [o]rder.” Docket Item 21-1.

“A party may be held in civil contempt for failure to comply with a court order if (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.” *Buffalo Laborers’ Welfare Fund v. D. Land Const. Co.*, 2010 WL 3894987, at *1 (W.D.N.Y. Sept. 30, 2010). All three prongs are easily met here.

First, this Court’s prior order was clear and unambiguous. As noted above, it required Gorilla Bounce to pay a set amount of costs and fees; to take specific actions regarding its products and business practices; and to file a written report showing its compliance. See Docket Item 14. Second, the proof of Gorilla Bounce’s noncompliance is clear and convincing: Tent and Table submitted a copy of Gorilla Bounce’s “online storefront, obtained from its website on May 4, 2023,” showing that Gorilla Bounce continues to sell “distinctive yellow and black air blowers” in violation of

this Court's prior order. Docket Item 21-6; see Docket Item 21-2 at ¶ 4. What is more, Gorilla Bounce failed to file a written report as ordered. Finally, it seems clear that Gorilla Bounce has not attempted to comply with this Court's order since it was issued more than a year ago.

CONCLUSION

In light of the above, Tent and Table's motion for an order to show cause, Docket Item 21, is GRANTED. **Within 30 days of the date of this order**, Gorilla Bounce shall show cause why it should not be held in civil contempt and why it should not be ordered to pay immediately (1) the \$11,696 in attorneys' fees and costs this Court previously awarded and (2) Tent and Table's costs and attorneys' fees incurred in attempting to enforce this Court's previous order.

SO ORDERED.

Dated: August 1, 2024
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE